IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WA.No. 2271 of 2007

AGAINST THE JUDGEMENT IN WP(C) NO.27284/2006 Dated 13/06/2007

APPELLANT: PETITIONER:

M/S.BALIYAPATTOM TILE WORKS LTD.,
NEELESWAR,
KASARAGOD DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR DEVADAS ARON,
AGED 72 YEARS,
S/O.SAMSON SUMITRAN ARON,
RESIDING AT PAPPINASSERY P.O.,
KANNUR DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS: RESPONDENTS:

1. THE VILLAGE OFFICER,
NEELESWAR,
NEELESWAR P.O.,
KASARAGOD DISTRICT.

2. THE TAHSILDAR,
HOSDURG TALUK,
KANHANGAD P.O.,
KASARGOD DISTRICT.

3. THE REVENUE DIVISIONAL OFFICER/SUB COLLECTOR,
KASARGOD AT KANHANGAD,
KANHANGAD P.O.,
KASARGOD DISTRICT.

4. THE ADDITIONAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

5. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/09/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2271 OF 2007

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Dated this the 24th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is the owner of the building situated in Sy.No. 423/1 of Neeleswaram Village. The Tahsildar, Hosdurg has assessed the ' other building' in Sy. No.423/1 of Neeleswaram Village.

2. Aggrieved by the said order, the assessee had filed an appeal before the Revenue Divisional Officer, Kasaragod inter alia claiming that the building in question is used as a factory building.

3. The Revenue Divisional Officer, thereafter, has referred the matter to the State Government as required under sub-section (2) of Section 3 of the Kerala Building Tax Act, 1975 (hereinafter referred to as 'Act'). The State Government, relying upon the inspection conducted by the Revenue Divisional Officer, has come to the conclusion that the building, which is assessed by the Tahsildar, is not a factory, but it is being used as a hotel and two rooms are used for the office of the building owner. Accordingly, the Government has rejected the claim of the petitioner for exemption as envisaged under Section 3 of the Act.

4. Aggrieved by the order dated 31.05.2000, passed by the State Government, the petitioner has filed Writ Petition No.27284 of 2006 before this Court .

5. The learned single Judge has rejected the Writ Petition by order

dated 13.06.2007. . While doing so, the learned single Judge has observed as under:

> *"The assessed building comprises of several shop rooms wherein goods are stored for sale and a hotel is also running. In the circumstances, commercial building, though located near the factory building , cannot be treated as a factory building. "*

6. Aggrieved by the aforesaid order passed by the learned single Judge, the petitioner is before us in this appeal.

7. Section 3 of the Act envisages that the Kerala Building Tax Act, 1975 is not applicable to the buildings owned by the Government of Kerala or the Government of India or any local authority and also to the buildings which are exclusively used for religious, charitable or educational purposes or as factories or workshops. Sub-section (2) of Section 3 of the Act provides that if any question arises as to whether a building falls under sub-section (1) of Section 3 of the Act , the matter shall be referred to the Government and the Government shall decide the question after hearing all the parties interested in the lis.

8. In the instant case, the petitioner owns a factory building. Apart from that, he has yet another building. It is that building was assessed by the Tahsildar. While doing so, the Tahsildar has taken into consideration the fact that the 'other building' is not in the nature of a factory and accordingly has come to the conclusion that the petitioner is exigible for payment of tax under the Act. The matter has been referred to the State Government by the first appellate authority as required under sub-section (2) of Section 3 of the Act. The State Government, based on the report of the Revenue Divisional Officer,

has come to the conclusion that the 'other building" has no access with the main factory and in fact, the 'other building' is used as a hotel and for accommodation of the owner of the building.

9. The orders passed by the State Government is purely based on the facts . If the building is used exclusively for the factory, then only this Act is made applicable to the said factory building. In the instant case, the building owned by the petitioner in Sy. No.423/1 of Neeleswaram Village is not exclusively used either for factory or for activities of the factory. Hence, the authorities under the Act as well as the State Government are justified in rejecting the request of the petitioner for exemption from payment of tax under the Act. The learned single Judge, in his order, has taken into consideration the factual matrix which are revealed from the records.

10. In that view of the matter, in our opinion, the learned single Judge has not committed any error whatsoever, which would call for our interference. Therefore, the Writ Appeal requires to be rejected and it is rejected without reference to the respondents .

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK